

(i) *Effective date.* This section shall apply to returns required for payments made after December 31, 2000.

[T.D. 8734, 62 FR 53467, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999; T.D. 8881, 65 FR 32201, 32212, May 22, 2000; 66 FR 18189, Apr. 6, 2001]

§ 1.1461-2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax—*
(1) *In general.* A withholding agent that has overwithheld under chapter 3 of the Internal Revenue Code (Code) and made a deposit of the tax as provided in § 1.6302-2(a) may adjust the overwithheld amount either pursuant to the reimbursement procedure described in paragraph (a)(2) of this section or pursuant to the set-off procedure described in paragraph (a)(3) of this section. Adjustments under this paragraph (a) may only be made within the time prescribed under paragraph (a) (2) or (3) of this section. After such time, a refund of the amount overwithheld can only be claimed by the beneficial owner with the Internal Revenue Service (IRS) pursuant to the procedures described in chapter 65 of the Code. For purposes of this section, the term overwithholding means any amount actually withheld (determined before application of the adjustment procedures under this section) from an item of income pursuant to chapter 3 of the Code or the regulations thereunder in excess of the actual tax liability due, regardless of whether such overwithholding was in error or appeared correct at the time it occurred.

(2) *Reimbursement of tax—*(i) *General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount overwithheld. In such a case, the withholding agent may reimburse itself by reducing, by the amount of tax actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under § 1.6302-2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. Any such reduction that occurs for a payment period in the calendar year following the calendar year

of overwithholding shall be allowed only if—

(A) The withholding agent states, on a timely filed (not including extensions) Form 1042-S for the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayment; and

(B) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414-1.

(ii) *Record maintenance.* If the beneficial owner is repaid an amount of withholding tax under the provisions of this paragraph (a)(2), the withholding agent shall keep as part of its records a receipt showing the date and amount of repayment and the withholding agent must provide a copy of such receipt to the beneficial owner. For this purpose, a canceled check or an entry in a statement is sufficient provided that the check or statement contains a specific notation that it is a refund of tax overwithheld.

(3) *Set-offs.* Under the set-off procedure, the withholding agent may repay the beneficial owner or payee by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 of the Code or the regulations thereunder to be withheld from income paid by the withholding agent to such person before the earlier of the due date (without regard to extensions) for filing the Form 1042-S for the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042-S (or an amended form) for the calendar year of overwithholding and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 of the Code and the regulations thereunder.

(4) *Examples.* The principles of this paragraph (a) are illustrated by the following examples:

Example 1. (i) N is a nonresident alien individual who is a resident of the United Kingdom. In December 2001, a domestic corporation C pays a dividend of \$100 to N, at which time C withholds \$30 and remits the balance

of \$70 to N. On February 10, 2002, prior to the time that C files its Form 1042, N furnishes a valid Form W-8 described in § 1.1441-1(e)(2)(i) upon which C may rely to reduce the rate of withholding to 15 percent under the provisions of the U.S.-U.K. tax treaty. Consequently, N advises C that its tax liability is only \$15 and not \$30 and requests reimbursement of \$15. Although C has already deposited the \$30 that was withheld, as required by § 1.6302-2(a)(1)(iv), C repays N in the amount of \$15.

(ii) During 2001, C makes no other payments upon which tax is required to be withheld under chapter 3 of the Code; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2002, shows total tax withheld of \$30, an adjusted total tax withheld of \$15, and \$30 previously paid for such year. Pursuant to § 1.6414-1(b), C claims a credit for the overpayment of \$15 shown on the Form 1042 for 2001. Accordingly, it is permitted to reduce by \$15 any deposit required by § 1.6302-2 to be made of tax withheld during the calendar year 2002. The Form 1042-S required to be filed by C with respect to the dividend of \$100 paid to N in 2001 is required to show tax withheld of \$30 and tax released of \$15.

Example 2. The facts are the same as in *Example 1*. In addition, during 2002, C makes payments to N upon which it is required to withhold \$200 under chapter 3 of the Code, all of which is withheld in June 2002. Pursuant to § 1.6302-2(a)(1)(iii), C deposits the amount of \$185 on July 15, 2002 (\$200 less the \$15 for which credit is claimed on the Form 1042 for 2001). On March 15, 2003, C Corporation files its return on Form 1042 for calendar year 2002, which shows total tax withheld of \$200, \$185 previously deposited by C, and \$15 allowable credit.

Example 3. The facts are the same as in *Example 1*. Under § 1.6032-2(a)(1)(ii), C is required to deposit on a quarter-monthly basis the tax withheld under chapter 3 of the Code. C withholds tax of \$100 between February 8 and February 15, 2002, and deposits \$75 [(\$100 x 90 percent) less \$15] of the withheld tax within 3 banking days after February 15, 2002, and by depositing \$10 [(\$100-\$15) less \$75] within 3 banking days after March 15, 2002.

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent may withhold from future payments made to a beneficial owner the tax that should have been withheld from previous payments to such beneficial owner. In the alternative, the withholding agent may satisfy the tax from property that it holds in custody for the beneficial owner or property over which it has control. Such additional withholding or satisfaction of

the tax owed may only be made before the date that the Form 1042 is required to be filed (not including extensions) for the calendar year in which the underwithholding occurred. See § 1.6302-2 for making deposits of tax or § 1.1461-1(a) for making payment of the balance due for a calendar year.

(c) *Definition.* For purposes of this section, the term *payment period* means the period for which the withholding agent is required by § 1.6302-2(a)(1) to make a deposit of tax withheld under chapter 3 of the Code.

(d) *Effective date.* This section applies to payments made after December 31, 2000.

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§ 1.1462-1 Withheld tax as credit to recipient of income.

(a) *Creditable tax.* The entire amount of the income from which the tax is required to be withheld (including amounts calculated under the gross-up formula in § 1.1441-3(f)(1)) shall be included in gross income in the return required to be made by the beneficial owner of the income, without deduction for the amount required to be or actually withheld, but the amount of tax actually withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

(b) *Amounts paid to persons who are not the beneficial owner.* Amounts withheld at source under chapter 3 of the Internal Revenue Code (Code) on payments to a fiduciary, partnership, or intermediary is deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any portion of the income received from a foreign trust, the part of any amount withheld at source which is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded. Further, if a partnership withholds an amount under chapter 3 of the Code with respect to the distributive share of a partner that is a